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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUAN A. CÁRDENAS and FLORENCIA  
HERRERA de CÁRDENAS, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

v.

AMERICREDIT FINANCIAL SERVICES,  
INC., and DOES 1-10, inclusive,

Defendants.

Case No. CV 09-4978 SBA

CLASS ACTION

**DEFENDANT AMERICREDIT FINANCIAL  
SERVICES, INC.'S OBJECTION AND  
MOTION TO STRIKE DECLARATION OF  
KATHRYN ALVARADO IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S MOTION TO COMPEL  
ARBITRATION**

Date: February 23, 2010

Time: 1:00 p.m.

Judge: Hon. Saundra B. Armstrong

Courtroom: 1, 4th Floor

[Case Filed: October 7, 2009]

1 **I. INTRODUCTION**

2 Plaintiffs Juan A. Cárdenas and Florencia Herrera de Cárdenas ("plaintiffs") filed the  
3 Declaration of Kathryn Alvarado ("Alvarado Decl.") on November 9, 2009 in support of their  
4 opposition to defendant AmeriCredit Financial Services, Inc.'s ("AmeriCredit's") motion to  
5 compel arbitration. Defendant brings this objection and motion to strike the Alvarado declaration  
6 on the following basis: it is (1) irrelevant, (2) includes hearsay and (3) includes improper expert  
7 opinion. Thus, it should not be considered in ruling upon AmeriCredit's Motion.

8 **II. ARGUMENT**

9 **A. The Alvarado Declaration is Irrelevant**

10 The Alvarado Declaration should be stricken in its entirety because it is irrelevant. Under  
11 Fed. R. Evid. 401, only relevant evidence is admissible. "Relevant evidence" means "evidence  
12 having any tendency to make the existence of any fact that is of consequence to the termination of  
13 the action more probable or less probable than it would be without the evidence." Fed. R. Evid.  
14 401. Judges have "wide discretion" in determining whether evidence is relevant. *United States v.*  
15 *Alvarez*, 358 F.3d 1194, 1205 (9th Cir. 2004). Thus, declarations that are irrelevant to a plaintiff's  
16 claims may be excluded. *See Lynne Wang v. Chinese Daily News, Inc.*, 435 F. Supp. 2d 1042,  
17 1063-64 (C.D. Cal. 2006).

18 The Alvarado declaration purportedly reflects a single consumer's experience in attempting  
19 to obtain (and in fact obtaining) representation after her vehicle was repossessed. Ms. Alvarado's  
20 experience does not have any tendency to make the existence of any fact in this case more or less  
21 probable. Ms. Alvarado admits she is not an AmeriCredit customer. Alvarado Decl. ¶ 1. She  
22 does not attach the pleadings in her case against an unnamed credit union, or otherwise testify as  
23 to what claims or defenses were at issue. A declaration of a single individual in a repossession  
24 case in another court involving unspecified parties, claims and defenses cannot make any fact  
25 more or less probable in this case.

**B. The Alvarado Declaration Contains Hearsay**

Portions of the Alvarado declaration contain hearsay, which should be stricken. Fed. R. Evid. Rules 801, 802. Thus, Ms. Alvarado purports to describe the content of her communications, with Mr. Ogilvie, plaintiffs' counsel, at page 2, ¶ 4 and page 3, ¶¶ 6, 7, and 8. Ms. Alvarado also purports to describe her conversation with an unnamed Barstow-area attorney at pages 2-3, ¶ 5. All such references should be stricken as hearsay; they are offered for the truth of the matters stated and no hearsay exception is proffered or applicable.

**C. The Alvarado Declaration Purports to Offer An Improper Expert Opinion**

The Alvarado Declaration is also an improper expert opinion. Under Fed. R. Evid. 701, law witness testimony is limited to opinions "rationally based on the perception of the witness" and "not based on . . . specialized knowledge within the scope of Rule 702." Under Fed. R. Evid. 702, expert testimony is admissible if it "will assist the trier of fact" and is "based on sufficient facts or data." In her declaration, Ms. Alvarado opines, "I understand that AmeriCredit is arguing that the deficiency claims in these cases are large enough so consumers can find lawyers to represent them when they have good claims or defenses. From my personal experience, I can tell the Court this is untrue." Alvarado Decl. ¶ 1. This purports to offer expert opinion with regard to whether consumers in similar cases are likely to obtain representation. Ms. Alvarado, as an individual consumer, is not qualified to testify as to what cases lawyers will take.

**III. CONCLUSION**

For the foregoing reasons, AmeriCredit respectfully requests that the Court strike the Alvarado Declaration in its entirety, and exclude all such proffered evidence when considering the motion to compel arbitration.

Dated: November 16, 2009

Respectfully submitted,

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By

/s/ Anna S. McLean

ANNA S. McLEAN

Attorneys for Defendant

AMERICREDIT FINANCIAL SERVICES, INC.